

**MICROMINE PITRAM SERVICES
AND SOFTWARE AGREEMENT**

VERSION: JUNE 2024

MICROMINE AUSTRALIA PTY LTD

ABN 72 630 329 118

micromine

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The Customer's use of Pitram Services, Software, or Goods are subject to Customer accepting the terms in this Micromine Pitram Services and Software Agreement that applies between MMPL and the Customer.

OPERATIVE PROVISIONS

RECITALS

- A. MMPL is in the business of providing the Services, Software and Goods.
- B. The Customer wishes to obtain and MMPL wishes to provide the Services, Software, or Goods for MMPL's Pitram product offering on the terms set out in this Agreement.
- C. This Agreement consists of this instrument of agreement (comprising these Recitals, the Operative Provisions and the signature page) and the following Schedules which are incorporated in this Agreement by this reference:

Schedule 1:	Statement of Work
Schedule 2:	Fees and Rates / Reference charges and payment terms
Schedule 3:	Micromine Pitram Software Licence Agreement terms
Schedule 4:	Anti-Bribery and Corruption Policy

If there is any ambiguity, inconsistency or conflict between the terms of any of these documents then, unless otherwise stated, the documents take precedence in the above order. If there is any inconsistency between any of the documents that comprise the description of a specific Service or scope of work in the Statement of Work, the document that was prepared later in time prevails.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, except where the context otherwise requires:

Agreement: this agreement and includes all schedules, attachments and annexures.

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Applicable Laws:

- a) all applicable laws, statutes, regulations and codes from time to time in force;
- b) common law and equity; and
- c) any decision, rule, ruling, binding order, interpretative decision, directive, guideline, request or requirement of any government agency or other authority with which the relevant party is legally required to comply,

in any country, state or territory in which MMPL's obligations under this Agreement are carried out.

Business Day: a day on which banks are open for business in Perth, Western Australia, excluding a Saturday, Sunday, public holiday in Perth, Western Australia and 27, 28, 29, 30 and 31 December.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.



Change Order: has the meaning given in clause 6.1.

Completion Date: means the date identified in 2.1, representing the end of the period of this Agreement.

Customer: The person or company who purchases or subscribes to Pitram Services, Software, or Goods from MMPL in connection with this Agreement.

Customer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in the Statement of Work.

Customer Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to MMPL in connection with the Services, including the items provided pursuant to clause 4.1(d).

Defect: any aspect of the Services or Goods not in accordance with the Statement of Work or, in the case of Software, prevents or significantly impairs a major function or service that the software provides or is materially different to that specified in MMPL's system documentation.

Deliverables: any output of the Services to be provided by MMPL to the Customer as specified in the Statement of Work.

Goods: the goods (if any) agreed in the Agreement to be purchased by the Customer from MMPL.

GST: the tax payable on taxable supplies under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Applicable Law imposing such tax.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Milestone: a date by which a part or all of the Services is to be completed, as set out in the Statement of Work.

MMPL: Micromine Australia Pty Ltd (ABN 72 630 329 118) of Level 6, 251 St Georges Terrace, Perth, Western Australia or its Affiliate.

MMPL's Equipment: any equipment, including tools, systems, cabling or facilities, provided by MMPL to the Customer and used directly or indirectly in the supply of the Services, including any such items specified in the Statement of Work but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

Prohibited Jurisdiction: Russia, the Democratic People's Republic of Korea, Iran, Syria, Libya, or jurisdiction(s) as nominated by MMPL from time to time and communicated in writing to the Customer.

Reference Charges: the standard charges for the Services or the framework for calculating them as set out in Schedule 2.



Services: the services to be provided by MMPL and specified as such in the Statement of Work (including any part of the specified services and any services which are ancillary to those specified in the Statement of Work, such as the procurement or supply of Goods).

Software: the executable code of the software applications developed by MMPL and supplied to the Customer, including (without limitation) any configuration, patches, interface applications or bespoke modifications.

SoW Charges: the sums payable for the Services, Software or Goods as set out in the Statement of Work.

Special Conditions: specific conditions contained in the Statement of Work that are expressly identified to be Special Conditions.

Standard Products: has the meaning given in clause 12.6.

Statement of Work: the detailed scope of work and prices, agreed/to be agreed between the parties to order the Services, Software or Goods to be provided by MMPL in accordance with the terms of this Agreement in substantially similar form/content to that contained in Schedule 1, and may be in the form of a MMPL proposal, estimate or quotation for acceptance by the Customer.

Tax Invoice: has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

1.2 Interpretation

Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

This Agreement shall be binding on, and apply to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

A reference to a law, statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

A reference to a law, statute or statutory provision shall include all subordinate legislation made from time to time under that law, statute or statutory provision and as amended, extended or re-enacted from time to time.

A reference to writing or written includes fax and email.



Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

Other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning.

A reference to “\$” is to Australian currency, unless otherwise specified.

A reference to a month is a reference to a calendar month.

No provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision.

A reference to the consent of a party means the prior written consent of that party.

Where time is to be reckoned by reference to a day or event, that day or the day of the event will be excluded.

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

A reference to a body (including an institute, association or authority), other than a party to this Agreement, whether statutory or not:

- (a) which ceases to exist; or
- (b) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

2. COMMENCEMENT AND DURATION

- 2.1** This Agreement shall commence on the date of completion and Customer’s acceptance of the terms in a Statement of Work and shall continue until its completion agreed therein (**Completion Date**), unless terminated earlier in accordance with clause 16.
- 2.2** The Completion Date may be extended by mutual agreement evidenced in writing and signed by both parties.
- 2.3** MMPL shall provide the Services from the date specified in the Statement of Work.

3. MMPL'S RESPONSIBILITIES

- 3.1** MMPL shall use reasonable endeavours to provide the Services, and deliver the Deliverables to the Customer, in accordance with the Statement of Work in all material respects.



- 3.2 MMPL shall use reasonable endeavours to meet any performance dates or Milestones specified in the Statement of Work but any such dates shall be estimates only and time for performance by MMPL shall not be of the essence of this Agreement.
- 3.3 MMPL shall appoint a manager in respect of the Services to be performed under the Statement of Work. MMPL shall use all reasonable endeavours to ensure that the same person acts as MMPL's manager throughout the term of the Statement of Work but may replace that person from time to time where reasonably necessary in the interests of MMPL's business.
- 3.4 MMPL shall use reasonable endeavours to observe all health and safety and security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 4.1(e), provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
 - (a) co-operate with MMPL in all matters relating to the Services;
 - (b) appoint a manager in respect of the Services to be performed under the Statement of Work. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Services (including by signing Change Orders);
 - (c) provide, for MMPL, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by MMPL including any such access as is specified in the Statement of Work;
 - (d) provide to MMPL in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under the Statement of Work or otherwise reasonably required by MMPL in connection with the Services and ensure that they are accurate and complete;
 - (e) inform MMPL of all health, safety and security requirements that apply at any of the Customer's premises by providing a physical or electronic copy;
 - (f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant standards or requirements;
 - (g) obtain and maintain all necessary licences and consents and comply with all Applicable Laws as required to enable MMPL to provide the Services, including in relation to the installation of MMPL's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Services are to start;
 - (h) keep and maintain MMPL's Equipment in good condition (or in accordance with MMPL's instructions from time to time if provided) and not dispose of or use MMPL's Equipment other than in accordance with MMPL's written instructions or authorisation;
 - (i) comply with any additional responsibilities of the Customer as set out in the Statement of Work; and
 - (j) not access, use, or (directly or indirectly) allow use, of the Services, Software or Goods in or for the benefit of any party in a Prohibited Jurisdiction.



4.2 If MMPL's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, MMPL shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

5. NON-SOLICITATION

5.1 The Customer shall not, without the prior written consent of MMPL, at any time from the date on which any Services commence to the expiry of six months after the completion of such Services, solicit or entice away from MMPL or employ or attempt to employ any person who is, or has been, engaged as an employee of MMPL in the provision of such Services.

5.2 Any consent given by MMPL in accordance with clause 5.1 shall be subject to the Customer paying to MMPL a sum equivalent to 20% of the then current annual remuneration of MMPL's employee or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee.

6. CHANGE CONTROL

6.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a relevant change order (**Change Order**) has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) the SoW Charges;
- (c) the timetable for the Services; and
- (d) any of the other terms of the Statement of Work.

6.2 If MMPL wishes to make a change to the Services it shall provide a draft Change Order to the Customer.

6.3 If the Customer wishes to make a change to the Services:

- (a) it shall notify MMPL and provide as much detail as MMPL reasonably requires of the proposed changes, including the timing of the proposed change; and
- (b) MMPL shall, as soon as reasonably practicable after receiving the information at clause 6.3(a), provide a draft Change Order to the Customer.

6.4 If the parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend the Statement of Work; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 31.

6.5 MMPL may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 6.3 on a time and materials basis at MMPL's daily rates specified in Schedule 2 or the Statement of Work. MMPL will advise



the Customer in advance if it intends to charge for the preparation of a Change Order and only proceed with the agreement of the Customer.

7. WARRANTIES

7.1 MMPL warrants that:

- (a) it has good title to the Software and is entitled to sell licences to use the Software to the Customer;
- (b) it will, at all times, ensure that MMPL's personnel are suitably qualified and experienced, and will exercise good industry practice in the performance of the Services and the Statement of Work;
- (c) the Software will function as described in MMPL product descriptions;
- (d) Goods are fit for the purpose described by MMPL; and
- (e) it will use its best endeavours to ensure that the Customer will have the full benefit of any manufacturer's warranties.

8. ACCEPTANCE

8.1 Where applicable to the Services as set out in the Statement of Work, the parties agree to conduct the defined acceptance testing and MMPL will rectify any identified and agreed Defects.

8.2 Upon successful completion of acceptance testing as defined in the Statement of Work, MMPL's obligations will be complete, subject to any obligations in clause 9.

9. DEFECTS

9.1 For Defects in Services identified within six months of the completion of the Statement of Work, MMPL will rectify the Defect at its expense.

9.2 For Defects in Software, MMPL will rectify the Defect in accordance with the specific product's maintenance program, providing the Customer is paying the annual maintenance fee.

9.3 For Defects in Goods identified within 12 months of delivery, MMPL will rectify or replace the Goods at its expense, provided the Defect was not caused by the misuse of the Customer.

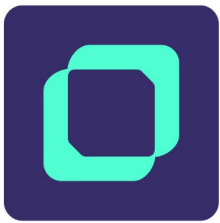
9.4 For MMPL's *Pitram* product, Defects will be resolved in accordance with the *Pitram Technical Support Services Definition* as amended or updated from time to time.

9.5 MMPL shall not in any circumstances be liable for any damage to the property of the Customer or Defect in the Software caused by improper use of the Software or use outside its normal application.

9.6 MMPL will not be liable to reimburse the Customer for costs incurred where the Customer attempts, or engages a third party to attempt, to rectify any Defects.

10. TITLE AND RISK

10.1 Unless otherwise defined by the use of Incoterms in the Statement of Work and subject to clause 12, title to the Goods or Deliverables passes from MMPL to the Customer upon payment of the applicable price or SoW Charges.



- 10.2** Unless otherwise defined by the use of Incoterms in the Statement of Work, MMPL bears the risk in the Goods or Deliverables until they are delivered to the agreed delivery point, at which time risk passes to the Customer.

11. CHARGES AND PAYMENT

- 11.1** In consideration of the provision of the Services or Software by MMPL, the Customer shall pay the SoW Charges.
- 11.2** Where the SoW Charges are calculated on a time and materials basis:
- (a) MMPL's standard daily fee rates for each individual person as set out in Schedule 2 or the Statement of Work are calculated on the basis of an eight-hour day, worked during Business Hours; and
 - (b) MMPL shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and MMPL shall indicate the time spent per individual in its invoices.
- 11.3** Where the SoW Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in the Statement of Work.
- 11.4** The SoW Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom MMPL engages in connection with the Services (which will be marked up at cost plus 10%); and
 - (b) the cost to MMPL of any materials or services procured by MMPL from third parties for the provision of the Services as such items and their cost are set out in the Statement of Work or approved by the Customer in advance from time to time.
- 11.5** MMPL may increase the Reference Charges and any SoW Charges not calculated in accordance with the Reference Charges on an annual basis with effect from each anniversary of the date of this Agreement in line with the percentage increase in a relevant and reliable local inflationary index in the preceding 12 month period and the first such increase shall take effect on the first anniversary of the date of this Agreement, unless otherwise agreed.
- 11.6** Any increase in the Reference Charges shall affect the SoW Charges (to the extent that they are calculated in accordance with the Reference Charges) in the Statement of Work in force at the date the increase takes effect.
- 11.7** MMPL shall invoice the Customer for the SoW Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Statement of Work. If no intervals are so specified, MMPL shall invoice the Customer at the end of each month for Services performed during that month.
- 11.8** The Customer shall pay each invoice submitted to it by MMPL within 30 days of receipt to a bank account nominated in writing by MMPL from time to time.
- 11.9** Without prejudice to any other right or remedy that it may have, if the Customer fails to pay MMPL any sum due under this Agreement on the due date:



- (a) the Customer shall pay interest on the overdue amount at the rate of 5% per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and
- (b) MMPL may suspend part or all of the Services until payment has been made in full.

11.10 All sums payable to MMPL under this Agreement:

- (a) are exclusive of GST, value-added or similar taxes, and the Customer shall in addition pay an amount equal to any GST, value-added or similar tax chargeable on those sums on delivery of a Tax Invoice;
- (b) are, subject to 11.11, exclusive of all taxes fees, levies, duties and charges imposed or assessed in respect of this Agreement by any government agencies (and the Customer shall in addition pay an amount equal to any such other charges, unless otherwise agreed in the Statement of Work); and
- (c) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11.11 If the Customer is required by law to deduct any withholding type tax (or similar levy) from any amount payable under this Agreement, the Customer must increase the amount payable to ensure MMPL receives a net amount equal to the amount that MMPL would have received had no such deduction been made. MMPL may adjust invoices to enable this to occur.

11.12 MMPL will be solely liable for income tax imposed on MMPL in respect of income derived by MMPL in the provision of any Services or in connection with this Agreement.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 In relation to the Deliverables and any other documents, information, products and materials provided by MMPL to the Customer in relation to the Services (excluding MMPL's Equipment):

- (a) MMPL and its licensors shall retain ownership of all Intellectual Property Rights, excluding the Customer Materials;
- (b) MMPL grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 12.1(b).

12.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants to MMPL a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Agreement for the purpose of providing the Services to the Customer.



12.3 MMPL:

- (a) warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall, subject to clause 15.3, keep the Customer indemnified in full against all reasonable costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use of the Services and the Deliverables; and
- (c) shall not be in breach of the warranty at clause 12.3(a), and the Customer shall have no claim under the indemnity at clause 12.3(b) to the extent the infringement arises from:
 - (i) the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Services or any Deliverable;
 - (ii) any modification of the Services or any Deliverable, other than by or on behalf of MMPL; and
 - (iii) compliance with the Customer's specifications or instructions.

12.4 The Customer:

- (a) warrants that the receipt and use in the performance of this Agreement by MMPL, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall keep MMPL indemnified in full against all reasonable costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by MMPL as a result of or in connection with any claim brought against MMPL, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Customer Materials.

12.5 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause 12, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 12.3(b) or clause 12.4(b) (as applicable) (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers



and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

12.6 Nothing in this clause 12 defines, confers rights in or limits the Intellectual Property Rights of MMPL in its standard range of developed software products including *Micromine*, *Geobank*, *Geobank Mobile* or *Pitram* (**Standard Products**). The Intellectual Property Rights of the parties in relation to the Standard Products are defined in their individual end user licence agreements or software licence agreements.

13. COMPLIANCE WITH LAWS AND POLICIES

13.1 In performing their obligations under this Agreement, each party shall comply with:

- (a) the Applicable Laws; and
- (b) the health, safety and security policies and requirements advised by the Customer in accordance with clause 4.1(e), provided that the Customer shall give MMPL not less than 1 month's notice of any change to such policies.

13.2 Changes to the Services required as a result of changes to the requirements in 13.1 shall be agreed via the change control procedure set out in clause 6.

14. CONFIDENTIALITY AND MEDIA RELEASE

14.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2 and 14.4.

14.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

14.4 MMPL may announce on its website or issue a media release or other form of publicity regarding the general nature of Services or Software provided to the Customer provided that it:

- (a) obtains the Customer's prior approval of the content (such approval not to be unreasonably withheld); and
- (b) is only done for the purposes of MMPL marketing.



15. LIMITATION OF LIABILITY

15.1 Nothing in this Agreement shall limit or exclude MMPL's liability for:

- (a) death or personal injury caused by its negligence; or
- (b) any other liability which cannot be limited or excluded by Applicable Law.

15.2 Subject to clause 15.1, MMPL shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill;
- (f) loss of use or corruption of software, data or information; and
- (g) any indirect or consequential loss.

15.3 Subject to clause 15.1, MMPL's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to the greater of \$100,000 and one hundred per cent (100%) of the average annual charges (calculated by reference to the charges in successive 12 month periods from the date of this Agreement) paid by the Customer under this Agreement.

15.4 Any terms related to warranty or liability that are implied into this Agreement by Applicable Laws are, to the fullest extent permitted by law, excluded from this Agreement.

16. TERMINATION

16.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this Agreement and such breach is irremediable or, if such breach is remediable, fails to remedy that breach within a period of ten Business Days after being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);



- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (f) the holder of a charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (g) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.1(b) to clause 16.1(g) (inclusive); or
- (i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.2 Without affecting any other right or remedy available to it, MMPL may terminate this Agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than five days after being notified in writing to make such payment;
- (b) the Customer breaches clause 4.1(j); or
- (c) there is a change of control of the Customer.

17. CONSEQUENCES OF TERMINATION

17.1 On termination or expiry of this Agreement:

- (a) the Customer shall immediately pay to MMPL all of MMPL's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, MMPL may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall return all of MMPL's Equipment. If the Customer fails to do so, then MMPL may enter the Customer's premises and take possession of MMPL's Equipment. Until MMPL's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping;
- (c) MMPL shall on request return any of the Customer Materials not used up in the provision of the Services; and
- (d) the following clauses shall continue in force: clause 1 (Interpretation), clause 5 (Non-solicitation), clause 12 (Intellectual property rights), clause 14 (Confidentiality), clause 15 (Limitation of liability), clause 17 (Consequences of termination), clause 22 (Waiver), clause 24 (Severance), clause 26 (Conflict), clause 31 (Multi-tiered dispute resolution procedure), clause 32 (Governing law), clause 33 (Jurisdiction) and any applicable Software Licence Agreement terms.



17.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

18. FORCE MAJEURE

18.1 Force Majeure Event means any circumstance not reasonably foreseeable and not within a party's reasonable control including, without limitation:

- (a) forces of nature, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (except where caused by or directly involving the party seeking to rely on this clause, or companies in the same group as that party); and
- (h) interruption or failure of utility service.

18.2 Provided it has complied with clause 18.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

18.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

18.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 30 days, the party not affected by the Force Majeure Event may terminate this Agreement by giving 7 days' written notice to the Affected Party.

19. ANTI-BRIBERY AND CORRUPTION

The Customer must comply with MMPL's *Anti Bribery and Corruption Policy* set out in Schedule 4.



20. ASSIGNMENT AND OTHER DEALINGS

20.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

20.2 MMPL may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

21. VARIATION

Subject to clause 6, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. WAIVER

22.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right, breach or default.

22.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

23. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

24. SEVERANCE

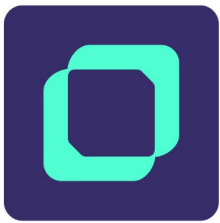
24.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

24.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

25. ENTIRE AGREEMENT

25.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

25.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.



26. CONFLICT

If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedules, the provisions of this Agreement shall prevail.

27. NO PARTNERSHIP OR AGENCY

27.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

27.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

28. THIRD PARTY RIGHTS

No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

29. NOTICES

29.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number or sent by email to the address specified in the Statement of Work or this Agreement.

29.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by fax or email, at 9.00 am on the next Business Day after transmission (provided no error in transmission notification is received by the sender).

29.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

30. COUNTERPARTS

30.1 This Agreement may be executed in any number of counterparts and will be deemed to have been fully executed once all parties have executed a counterpart.

30.2 All counterparts, taken together, constitute one instrument.

30.3 A party may execute this Agreement by signing any counterpart.



30.4 For the purposes of assembling all counterparts into one document, MMPL is authorised to detach the signed signature page from one or more counterparts and attach it to one single counterpart.

31. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

31.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, senior executives from both parties shall attempt in good faith to resolve the Dispute;
- (b) if they are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting mediation.

31.2 No party may commence any court proceedings under clause 33 in relation to the whole or part of the Dispute until 60 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

31.3 If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of Western Australia in accordance with clause 33.

32. GOVERNING LAW

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Western Australia.

33. JURISDICTION

Each party irrevocably agrees that the courts of Western Australia shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.



SCHEDULE 1

Statement of Work

1. SERVICES - OVERVIEW

1.1 Overview / Context of Services and the Project

This proposal is for [xxxxx].

The Services have been requested by [name, title].

The reason/purpose for the Services is to [xxxxx].

1.2 Objectives and Scope Description

[The proposed scope of works is a combination of requirements gathering, software configuration, testing and commissioning.]

1.3 Site for provision of Services

[The configuration, testing and commissioning will be undertaken at MM's offices in Perth and Brisbane.]

1.4 Customer Site access requirements

[Off-site work will be conducted at MM offices. Onsite work by MM personnel is not required for this Statement of Work.]

2. SERVICES – DETAILS

2.1 Services – Detailed description

The components identified are as follows:

- (a) Requirements Gathering
- (b) Software Configuration
- (c) Testing
- (d) Commissioning

2.2 Specifications

[xxx – Refer to documents if applicable.]

2.3 Compliance with standards

MM will comply with all relevant standards required to conduct the work as specified by the Regional Customer. [or insert list]

2.4 Deliverables

[xxx – List or table if applicable].



2.5 Milestones

Milestone / deliverable	Date due
1. Requirements Gathering	
2. Configuration	
3. Testing	
4. Commissioning	

2.6 Project Management Plan

The final schedule for delivery timelines will be confirmed with site management prior to commencement of works.

3. **COMPLETION DATE AND ACCEPTANCE**

[date or To be confirmed with site management].

Acceptance Criteria and Acceptance Tests (optional)

3.1 Acceptance Criteria

xxx

3.2 Acceptance Tests

yyy

4. **PRICE, TAX AND INVOICING**

4.1 Price

(a) Charging model and currency

All prices are in Australian dollars unless clearly stated otherwise.

Pricing has been supplied as per the existing Master Services and Software Agreement.

(b) Variable charges

Pricing has been supplied as per the existing Master Services and Software Agreement which is as follows:

Description	Price/Rate
Level 2 Pitram System Specialist – off-site	\$x per day
Level 2 Pitram System Specialist – on-site	\$y per day

4.2 Tax



All prices in this Statement of Work are [inclusive or exclusive] of [tax name e.g. GST or 'all taxes'] tax.

4.3 Invoicing requirements

(a) Address for invoices:

Customer Pty Ltd

Street address

Attn: Accounts

(b) Time for submission

MM may submit invoices upon receipt of a purchase order for the full proposal amount.

(c) Other information

Invoices must quote purchase order number: nnnn



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SCHEDULE 2

Fees and Rates / Reference charges and payment terms

To be agreed in Statement of Work



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SCHEDULE 3

Pitram Software Licence Agreement terms

Available at <https://www.micromine.com/licensing/>



SCHEDULE 4

Anti-Bribery and Corruption Policy

POLICY STATEMENT

MICROMINE is committed to ensuring that its business is conducted according to ethical, professional and legal standards in a fair, honest and open manner. It is vital for us to maintain this reputation as it instils confidence in our workforce and clients.

MICROMINE has a zero tolerance approach towards bribery and corruption.

PURPOSE

Bribery and corruption has the potential to expose the Company, its Directors, employees and business partners to the risk of criminal prosecution, in addition to harming the Company's reputation. Therefore, it is vital that we ensure employees and those who work on our behalf understand their responsibilities and operate to high ethical standards.

DEFINING BRIBERY AND CORRUPTION

'Bribery' is the offer, promise, giving, demanding or acceptance of an advantage in monetary or other form, as an inducement or reward for the improper performance of a function or activity which is expected to be performed in good faith or impartiality by someone in a position of trust. In many countries, bribery is a criminal act.

'Corruption' is the misuse of power for private gain; or misuse of power in relation to business outside the realm of MICROMINE.

Acts of bribery or corruption generally involve the undue influence of an individual in the performance of their duty.

Examples of what is considered OK and what is not acceptable is listed below.

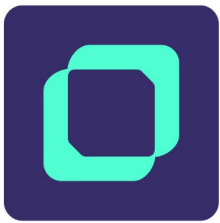
PROHIBITION ON BRIBERY AND CORRUPTION

MICROMINE prohibits bribery and corruption, in any form, whether direct or indirect.

Most countries have laws prohibiting bribery of private individuals and government officials. There are potentially serious consequences, including fines and imprisonment, for contravention of Anti-Bribery and Corruption laws.

To this end:

- You must not offer, pay, solicit or accept bribes in any form.
- You must not engage in any form of corrupt business practice, whether for the benefit of MICROMINE, yourself or another party.
- Requests for bribes or facilitation payments must be reported to an EXCO member and/or HR.



Gifts and entertainment, political contributions, charitable contributions and sponsored travel have the potential to be misused as a cover for bribes or improper payments for the purpose of influencing decisions or obtaining preferential treatment. For this reason, MICROMINE has adopted special rules in relation to these types of payments to ensure openness and transparency.

EXCHANGING GIFTS AND ENTERTAINMENT

Giving and receiving gifts or hospitality are part of normal business practice. However, MICROMINE prohibits the giving and receiving of gifts or entertainment in connection with its operations which go beyond common courtesies associated with general commercial practice. This is to ensure that the offer or acceptance of a gift or entertainment does not create an obligation or cannot be construed or used by others to allege favouritism, discrimination, collusion or similarly unacceptable practices.

POLITICAL DONATIONS

MICROMINE does not make political donations to any political party, politician or candidate for public office in any country unless the donation has been approved in advance by the company's Board of Directors.

REPORTING VIOLATIONS

You are required to report any suspected or actual violation of this Policy. The report may be made to any member of MICROMINE's Board of Directors.

You will not suffer any form of retaliation, reprisal or detriment from MICROMINE for raising a concern or reporting in good faith a violation of this Policy; nor will you suffer any form of reprisal from MICROMINE for refusing to make a corrupt payment.

CONSEQUENCES

Any breach of this Policy is a serious matter which will be investigated and addressed by MICROMINE.

Matters may also, depending on circumstances, be referred to law enforcement agencies.